

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 503 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 : YES, 2 to 5 : NO

SUJAL LEASING AND FINANCE LTD.

Versus

PATHAL GANGA TUBE WELL

Appearance:

MR UNMESH D SHUKLA for Petitioner

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 10/02/98

ORAL JUDGEMENT

This is an appeal against Order dated 1st October, 1997 directing the defendant to restore the possession of the disputed Truck to the plaintiff on or before 10th October, 1997. The present-respondent filed a Suit for injunction against the appellant-Defendant

seeking relief that the defendant should not take forcible possession of Truck No. GJ-2-A 2849 with boring rig and other accessories from the plaintiff. It appears that the plaintiff had acquired the Truck under the Hire Purchase Agreement with the Defendant-Appellant who was a Financier. Alongwith the Suit, a notice of motion was also taken out for temporary injunction in the said terms. Show cause notice was issued and it was made returnable on 16th May, 1997. On that date, defendant appeared and filed reply and the matter was adjourned to 23rd September, 1997. On that date, a Rejoinder was filed, however, matter could not be taken up and accordingly, it was adjourned to 1st October, 1997. On 1st October, 1997, an application was moved by the Plaintiff stating that though matter is pending, notice of motion is not decided, the Defendant has acted in the high handed manner and forcibly taken possession of the Truck on 25th September, 1997.

The Defendant did not deny the fact of taking possession of the truck on 26th September, 1997 but it was urged that since there was no prohibitory order passed by this Court, even after filing of the reply, the Defendant has not done anything wrong. In the aforesaid circumstances, the trial Court was of the opinion that action of the defendant after service of the notice of motion and after submission of reply when matter was subjudiced and pending consideration, taking away possession of the truck in question from the Plaintiff amounts to over-reaching the Court infructuating the Suit itself without obtaining appropriate orders in the pending proceeding and allowed the application of the Plaintiff to restore possession of the disputed truck to the Plaintiff. It is against this Order, this appeal has been filed.

It has been urged by the learned counsel for Appellant that in fact the learned trial Judge on an oral prayer made in this behalf has refused to grant interim order, and therefore, he was justified in acting within the provicince of right available to him under the agreement of hire purchase, by taking possession of the Truck.

I am unable to accept this contention. Firstly, there is no mention of refusal to oral prayer made on behalf of the plaintiff. No such submission was made before the trial Court also. The only contention raised before the trial Court was that since no prohibitory order was imposed even after filing of the reply, the defendant was justified to act in the terms of the

agreement. That apart, law is trite that facts mentioned in narration of the order are to be accepted as correct unless they are shown to be contrary to record and their correctness itself is subject matter of appeal. A party is not entitled to challenge the correctness of such facts in appeal incidentally by making reference to oral submissions made in the trial Court and response; if any, given by the trial Court which in the very nature of it not verifiable. In that event, the only remedy open to the party concerned is to promptly apply for review and seek narration of facts corrected in the order of the Court, before the same Court only.

The chain of events that has taken place as disclosed in the Order under appeal leaves no room for any other conclusion then that the appellant-Defendant has acted in a manner to over reach the decision of the Court in the matter subjudice before it and to infractuate whole proceedings by his own act. It is not a case where defendant has exercised his right under the Contract, before filing of the suit nor it is a case where he has exercised such right before notice of application has been served upon him. The fact that law does not favour ad-interim ex-parte order and requires that orders are made in the presence of the parties does implicitly call restraint from the parties after they are apprised of respective case and the materials, inviting attention of the Court on application for interim relief to desist from indulging into any such activities which results into proceedings getting infructuous and erodes the confidence of the people in the basic efficacy of the Institution of Court as an effective tool of administration of justice.

In the aforesaid circumstances, the order under appeal does not call for any inference. Appeal stands dismissed. Ad-interim order, if any, stands vacated. It may be noticed that what the Court has done is merely to put the parties in the same position as they were at the time of filing of the Suit before proceeding further in the matter on the application for issue of temporary injunction. The trial court must now expeditiously decide the application Exh. 5 as soon as status quo is restored, at its earliest, without countenancing casual adjournments.

Prakash*